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AGREEMENT

BETWEEN

THE CITY OF TORONTO

AND THE

GRAND TRUNK RAILWAY COMPANY OF CANADA

FOR THE

CONSTRUCTION OF THE COMPANY'S TRACT

ALONG THE FRONT OF THE CITY.

TORONTO:
MACLEAR & CO., KING STREET EAST.
1856.

AGREEMENT

THE CITY OF TORONTO

GRAND TRUNK RAILWAY COMPANY OF CANADA

IN WITNESS WHEREOF

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AGREEMENT
BETWEEN THE CITY OF TORONTO

AND THE

GRAND TRUNK RAILWAY COMPANY OF CANADA.

THIS AGREEMENT, made the 21st day of January, in the year of our Lord 1856, **BETWEEN** the Mayor, Aldermen and Commonalty of the City of Toronto, of the first part, and the Grand Trunk Railway Company of Canada, of the second part.

WHEREAS, by certain articles of agreement, bearing date the 4th day of January, in the year of our Lord one thousand eight hundred and fifty four, the party hereto of the first part contracted with Casimir S. Gzowski, D. L. McPherson, L. H. Holton, and A. T. Galt, for the Construction of an Esplanade along the front of the City of Toronto, upon the terms and conditions in the said articles of agreement mentioned ; **AND WHEREAS** the said C. S. Gzowski, D. L. McPherson, L. H. Holton, and A. T. Galt, commenced operations under the said contract, and have performed part of the work therein contracted to be performed, and have certain claims and demands against the said party hereto of the first part, under the said contract.

AND WHEREAS the said party hereto of the first part has declared the said contract at an end ; **AND WHEREAS** the said party hereto of the second part have agreed to assume the settlement of all claims and demands by the said Casimir S. Gzowski, D. L. McPherson, L. H. Holton, and Alexander T. Galt, against the said

party hereto of the first part, and to relieve and indemnify the said party hereto of the first part from all the said claims and demands.

AND WHEREAS, under the Provisions of an Act of the Legislature of this Province, entitled "An Act to authorise the Grand Trunk Railway Company of Canada to change the location of their line in and near the City of Toronto," the said party hereto of the first part are authorised and empowered to contract with the party hereto of the second part for the construction of the said Esplanade, or of any portion thereof. AND WHEREAS the said party hereto of the first part are desirous of contracting with the said party hereto of the second part, for the construction of the works hereinafter mentioned.

NOW these presents witness, that the party hereto of the first part, for themselves and their successors, and the party hereto of the second part, for themselves and their successors, mutually covenant, promise and agree the one to and with the other as follows :—

FIRST—The party of the second part agree to assume the settlement of all claims existing between C. S. Gzowski, D. L. Macpherson, L. H. Holton, and A. T. Galt, and the party hereto of the first part, and to indemnify and relieve the said party of the first part of and from the same.

SECOND—The parties hereto agree forthwith to submit the said claims, as matters in dispute between them, to the award, final end and determination of A. M. Ross and T. C. Keefer, Esqrs., and of a third Arbitrator, to be chosen by the persons so named before proceeding with the said arbitration; and the parties hereto mutually covenant the one with the other, for themselves and their successors, that they will well and truly stand to, abide by, perform, fulfil and keep any award which may be made by the Arbitrators so named and chosen or by a majority of them. Provided that such award be made in writing, ready to be delivered to the said parties on or before the first day of March next, the said Arbitrators or a majority of them to have the power to enlarge the time for making their award by writing, under their hand, and to examine all persons and witnesses upon oath. Provided always, and it is hereby agreed, that the said party of the first part shall be at liberty, before the said

arbitrators, to dispute the quantity and prices of works, and materials charged for, by the said C. S. Gzowski, D. L. Macpherson, L. H. Holton, and A. T. Galt, and each and every other claim made by them in like manner as if such arbitration had been made between the said C. S. Gzowski and his said partners and the party of the first part.

THIRD—The party of the first part agree to pay the amount of any award which may be made by the said Arbitrators, or a majority of them, by virtue of the above reference, in favour of the party of the second part, for and on account of the claims of the said Gzowski & partners, against the said City, hereinbefore agreed to be assumed and settled by the said party of the second part, in Debentures of the party of the first part, payable in twenty years, with interest thereon, at the rate of six per cent. per annum, payable semi-annually, the said Debentures and interest to be payable in sterling money, in the City of London, England, at such banking-house as the party of the second part may name, the said sterling money to be at the rate of 24s. 4d. currency for each pound sterling, or in cash, at the option of the party of the first part. Provided always, that if the party of the first part elect to pay the amount of such award in Debentures, payable as aforesaid, then the rate of premium or discount at which the said party of the second part shall be bound to receive the same shall be fixed by T. G. Ridout, Esq., Cashier of the Bank of Upper Canada, and the parties hereto mutually agree to pay and receive the amount of such award in the Debentures, at such rate as the said T. G. Ridout shall so fix. But if the said party of the first part elect to pay the amount of such award in cash, then the said party of the first part shall be allowed a credit of twelve months from the date of such award to pay the same, the amount so awarded to bear interest, at the rate of six per cent. from the date of such award.

The said party of the first part also agrees that they will make the debentures so to be issued, payable in such sums as the party of the second part may require. Provided, that they shall not be required to issue Debentures for a smaller sum than £100 each. It is also agreed, that the said party of the first part shall declare their option, and deliver the Debentures on certificate hereinafter mentioned to the party of the second part, within one calendar month from the making of the said award; and that if the party of the first part do not within the said term of one calendar month elect to pay the said

award in Debentures, and notify such their election to the parties of the second part, within the said term of one calendar month, then it is understood and agreed between the parties, that the party of the first part shall be held and taken to have elected to pay in cash, in manner and on the terms before mentioned.

FOURTH—The party of the second part covenant as aforesaid forthwith to proceed with the construction of a Railway track or way, forty feet in width, with all necessary slopes in cuttings, in the proportion of one-and-a-half horizontal to one perpendicular, along the front of the City of Toronto, on the line and in the direction marked on the plan hereto attached, and which shall be taken to be part of the contract.

FIFTH—The party of the first part covenant as aforesaid, that in consideration of the sum of £10,000 of lawful money of Canada, to be paid to the party of the first part by the party of the second part, they shall and will guarantee the exclusive right of way for the said forty-feet track, along the said line, from Brock Street to Parliament Street, as shewn on the said plan, to the said party of the second part and their assigns, and shall and will indemnify and save harmless the party of the second part and their successors, of, from and against all claims and demands whatsoever, of or by all person or persons whomsoever, for or by reason of the construction of the said forty-feet tract, and the said slopes, and shall and will pay and discharge all claims for land, damages, and all costs and expenses of any arbitrament or other legal proceedings which may be necessary, or may be incurred in consequence of the construction of the said tract of 40 feet and slopes. It being expressly declared and agreed between the parties hereto, that the party of the second part shall not for or by reason of the construction of the said Railway Track and Slopes, be subjected to the payment of a larger sum than £10,000, for any cause whatsoever.

SIXTH—Provided always, that the said party of the second part shall not obstruct the approaches to the wharves in front of the City unnecessarily, in the construction of the said forty-feet tract; and also that the said party of the second part shall, during the continuance of the said work, at their own expense, keep up at least two lights at night at such approaches to any of the public wharves in

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front of the said City, where any such work is at the time being proceeded with, and such temporary approaches thereto as may be necessary during the progress of the work.

SEVENTH—The said Railway Track of forty feet in width, with the said slopes, to be constructed by the party of the second part, in such manner as may be considered necessary by the Engineer appointed by them to superintend the construction of the same. Provided always, that no alteration in the line so marked on the plan hereto annexed shall be made without the consent of the party of the first part, and that the proportion of one-and-a-half to one be observed.

EIGHTH—The party of the second part covenant as aforesaid, that in the construction of the said Railway Track they shall not and will not obstruct the escape of the present public Sewerage of the City.

NINTH—The party of the first part covenant as aforesaid, that they shall and will pay to the party of the second part, for the construction of the said Railway Track and Slopes, as follows, the price and quantities of all works and materials to be fixed by the Arbitrators herein before named, within one month from the date of this agreement.

And the parties hereto mutually covenant the one with the other, for themselves and their successors, that they will well and truly stand to, abide by, perform, fulfil and keep any award which may be made by the Arbitrators so named and chosen, or by a majority of them, or by such Arbitrators as may be hereafter named and chosen as hereinafter provided, so that their award be made in writing, under the hands of the said Arbitrators or of a majority of them.

TENTH—That the party of the first part covenant as aforesaid, that they shall and will monthly give to the party of the second part a certificate, under the seal of the party of the first part, of the amount payable, at the rates to be fixed by the said Arbitrators as aforesaid, for the work done and materials furnished by the party of the second part, such monthly certificates to be given upon the certificate of the Engineer in charge of the work.

ELEVENTH—The party of the first part agree to pay for all work done and materials furnished in the construction of the said Railway track in debentures of the party of the first part, payable in twenty years, with interest thereon, at the rate of six per cent., per annum, payable semi-annually; the said debentures and interest to be payable in sterling money, in the city of London, England, at such Banking-house as the party of the second part may name; the said sterling money to be at the rate of 24s 4d. currency for each pound sterling, or in cash, at the option of the party of the first part. Provided always, the said party of the first part shall, within one month from the date of this agreement, declare their option as to whether they will pay in debentures or in cash, and that no alteration shall afterwards be made in the mode of payment.

TWELFTH—If the party of the first part elect to pay for the said work, materials, and other claims, in debentures, payable as aforesaid, then the rate of premium or discount at which the party of the second part shall be bound to receive, the same shall be fixed by Thomas G. Ridout, Esq., Cashier of the Bank of Upper Canada, and the parties hereto mutually agree to deliver and receive the said debentures at such rate as the said T. G. Ridout shall so fix. But if the said party of the first part elect to pay in cash, then the said party of the first part shall be allowed a credit of twelve months from the date of such monthly certificate, to pay such certificate, the said amount to bear interest at the rate of six per cent. The said party of the first part also agree that they will make the debentures so to be issued for the said work payable in such sums as the party of the second part may require. Provided that they shall not be required to issue any debenture for a smaller sum than £100.

THIRTEENTH—The party of the first part further covenant, as aforesaid, that they shall and will furnish to the party of the second part, such earth as the party of the second part may require for the construction of the said track of forty feet and slopes as aforesaid, and which it may be in the power of the party of the first part to grant at and for the price of threepence for each cubic yard, and the party of the second part covenant, as aforesaid, that they will well and truly pay to the party of the first part the said price of threepence per cubic yard for each yard of earth so furnished, or shall and will allow the same as a payment on account of the work done under this contract.

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FOURTEENTH—The party of the second part further covenant as aforesaid, that they shall and will well and truly pay to the said party of the first part the said sum of £10,000, upon the said party of the first part assuring to the said party of the second part and their assigns the exclusive right of way over, upon, and along the said Railway track of 40 feet.

FIFTEENTH—The party of the second part further covenant as aforesaid, that they will by all means in their power assist the party of the first part in obtaining a Patent from the Crown of all lands and land covered with water, which the party of the first part now hold or claim or claimed title to, under the license of occupation granted to the party of the first part, on the 29th day of March, 1853, so soon as these presents are executed.

SIXTEENTH—It is also agreed between the parties hereto, that as well the party of the first part and their assigns, as also all owners of lands or land covered with water immediately to the south of and abutting upon the southerly side of the said forty feet track, or entitled to the slope immediately to the north of the said track west of Bay Street in the said City of Toronto, and their assigns shall have the right to build over the said track, provided that all erections be done upon and according to such plan as shall be approved of by the Board of Railway Commissioners. And provided also that such erections do not interfere with the lighting, ventilating and other, the full and free use of the said track by the party of the second part.

SEVENTEENTH.—And, whereas, doubts have been entertained as to the liability of the party of the second part, to make and erect bridges and crossings over and upon the said tracks, for and by reason of the occupying and using the same by the party of the second part as a Railroad Track. It is hereby expressly declared and agreed, that the party of the first part shall not require the said party of the second part, to build, find, or procure any Bridges, Ramps, Crossings, or any other approaches whatever, over, along, or to the said Railway Track; but shall provide all such, if and whenever required, at their own expense; it being the intention of the parties to these presents, that the party of the first part, for and in consideration of the said sum of £10,000, so to be paid as aforesaid, do

guarantee and indemnify the party of the second part of, from and against all claims and demands whatever, for or by reason of the Railway of the party of the second part being placed on said track of 40 feet.

EIGHTEENTH—The party of the second part do further agree, that they shall and will assist the party of the first part, in so far as may be necessary in contracting for, or constructing the Esplanade along the front of the City of Toronto, under the second section of the Act passed in the 18th year of Her Majesty's reign, Chap. 175; and fixing upon and determining the plan and site of the said Esplanade, and in taking any other benefit under the said act for the purpose of conferring upon the party of the first part the powers mentioned in the said act concerning the said Esplanade, if the party of the first part shall deem it advisable to require such assistance; the party of the first part agreeing to pay all costs and expenses thereby incurred. And the party of the first part agree that they shall not let to contract nor construct the Esplanade, or general earth-filling until after the party of the second part shall have completed the said Railway Track and Slopes. Provided always that the party of the second part shall use all reasonable expedition to finish the said Railway Track during the present year. It is also mutually agreed that the party of the first part shall not interfere unreasonably with the party of the second part, nor shall the party of the second part interfere unreasonably with the party of the first part, either in the formation of the Railway Track, or after the construction and occupation of the said Track by the said party of the second part, or in the construction of the said Esplanade; but each shall and will afford all proper facilities to the other.

NINETEENTH—It is agreed that on any reference to arbitration under any of the provisions of this agreement, all maps, plans, surveys, and documents made by C. S. Gzowski & Co., or the party of the second part shall be produced before and submitted to the arbitrators, who may act in any of the above matters, and the same shall be open to and may be used and referred to by the parties hereto, for the purposes of such arbitration. It is also agreed that if the said Alexander McKenzie Ross shall be unable or refuse to act as an arbitrator, then the party of the second part shall have the right to nominate another person in the place of the said Alexander

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McKenzie Ross; and if the said Thomas C. Keefer shall be unable or refuse to act as an arbitrator, then the party of the first part shall have the right to nominate another person in the place of the said Thomas C. Keefer.

TWENTIETH—It is agreed that the submissions herein contained, and any award made thereunder, may on the application of either party be made a rule of one of the Superior Courts of Common Law for Upper Canada.

TWENTY-FIRST—Lastly, it is agreed, that in the event of any application to the Legislature being considered necessary or expedient by either of the parties hereto, for the purpose of confirming or sanctioning any stipulation or agreement herein contained, the parties hereto shall and will, and hereby do consent to such application being made; and further, that if the party of the first part shall deem it expedient to apply to the Legislature for any purpose whatever connected with the construction of the Railway Track, or of the Esplanade, or the general earth-filling, or the laying out, or planning, or alteration of the same, the party of the second part shall and will assist the party of the first part, by all reasonable means, in such application, and in procuring whatever Legislation may be required on the subject.

AND WHEREAS the track of the Ontario, Simcoe and Huron Railroad Company passes upon that part of Front Street aforesaid which will be required for the slope in the construction of the said Track of the party of the second part, and it is necessary that some provision should be made in reference thereto.

NOW THESE PRESENTS WITNESS, that it is mutually agreed between the said parties of the first and second parts, that if the said party of the first part shall at any time within one calendar month from the execution of these presents desire to make any deviation from the location of the said track of the party of the second part, as laid down upon the said plan, so as to prevent interference with the said track of the Ontario, Simcoe, and Huron Railroad Company, then that the said party of the second part, on notice thereof within the period aforesaid, shall proceed to execute their said track upon that part thereof lying between Brock and Bay

Streets, on such part of the frontage of the said City as shall not be further south than twenty-six feet from the southern line of the said forty feet, as laid down on the said plan; and all the covenants, agreements and provisions herein contained and applicable to the said forty-feet track, as laid down on the said plan, shall be applicable to the said substituted track as fully and effectually to all intents and purposes as if such substituted track had been the track originally laid out on the said plan, and had been specially referred to in all the provisions of these presents.

AS WITNESS the hands and seals of the said parties, the day and year first above written.

(Signed) G. W. ALLAN,
Mayor.

[L. S.] (Signed) JOHN ROSS,
*President Grand Trunk Railway
Company of Canada.*

(Signed) A. T. McCORD,
Chamberlain.

*Signed, sealed, and delivered in
presence of*

(Signed) C. GAMBLE.

(Signed) W. SHANLEY.

Sir,

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To G. W.
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Resolved

Toronto, 21st January, 1856.

Sir,

At your request I hereby consent and agree that the track of the Northern Railway, along the south side of Front Street, between Bay and Brock Streets, shall continue to be left where it is until the 15th day of June now next ensuing; and further, that we will construct our forty-feet track for the City, and accept it under an agreement with the City (if notice be given by the Corporation within one month from this date desiring us to do so) along the outside line of the proposed Esplanade, as shown and pointed out by Mr. Shanley in pencil, on the plan which we have signed; and further, where the said forty-feet track touches the old line of Esplanade, the line to be carried along the south side thereof, subject to all the conditions, covenants and provisos contained in the agreement this day executed between the City and ourselves, if the City desire such change within one month from date.

(Signed)

JOHN ROSS,

Pres. G. T. R. Company.

To G. W. Allan, Esq.,
Mayor of Toronto.

P. S.—The Covenant in our Agreement with respect to the patent for the property embraced in the license of occupation of 29th March, 1853, I shall endeavour to get carried out as speedily as possible. Mr. Wilson requested Mr. Attorney-General Macdonald, in my presence, to get it ready as speedily as possible, and I have no doubt that this is being done according to the terms read over by you in presence of Mr. Macdonald and Mr. Cayley, when we met to agree upon the terms embraced in our present contract.

(Signed)

JOHN ROSS.

Council Chamber, Toronto, Feb. 11th, 1856.

Resolved—That the Solicitor of the Corporation be instructed to

give notice to the Grand Trunk Railway Company of Canada, pursuant to the agreement of the 21st January last, that they are required to remove their forty feet track from the foot of the slope, so much further south as will prevent interference with the track of the Ontario Simcoe and Huron Railroad Company.

Communicated by the City Solicitor to
The Hon. John Ross, President G. T. R. Co. of Canada.
February 19th, 1856.

Copy of Report of Standing Committee on Wharves Harbours, &c.

To the Worshipful the Mayor, Aldermen and Commonality of the City of Toronto in Common Council assembled.

The Standing Committee on Wharves and Harbours beg leave to bring up the first Report.

That in as much as the Arbitrators appointed between the City and the Grand Trunk Company, under the contract entered into between them under date of the 21st January last, have been as yet unable to meet to enter upon such arbitration. And whereas, it may be doubtful whether the time for such arbitration may not expire before any meeting of such Arbitrators.

The Committee hereby recommend to the Council to adopt a resolution agreeing to enlarge the time for making any award to be made under the said contract for the period of two months from this date.

All of which is respectfully submitted,

(Signed) GEORGE A. PHILLPOTTS,
Chairman.

Adopted in Council 21st February, 1856, and communicated same day by the Clerk of the Council to The Hon. John Ross, President of the Grand Trunk Railroad Company.

Toronto, February 28th, 1856.

Sir,

I have the honour by direction of the Directors of the Grand Trunk Railway Company to inform you that at their meeting this day

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To His Honor
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they resolved to agree to an enlargement of the time for a period of two months from 21st February inst., for making the award under the recently executed Contract between this Company and the Toronto Corporation, on the subject of the Esplanade, and that the President of the Company is duly authorised to take the necessary steps to give legal effect to such enlargement on behalf of the Company.

(Signed)

JOHN M. GRANT,

Assistant Secretary.

To His Honour,

The Mayor of Toronto.